



Costs Decision

Inquiry held between 4 April 2023 and 24 April 2023

Site visit made on 18 April 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2023

Costs application in relation to Appeal Ref: APP/G1630/W/22/3310117 Land East of St Margaret's Drive, Alderton, Tewkesbury, GL20 8NY

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rainier Developments Limited and the Gilder Family for a partial award of costs against Tewkesbury Borough Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the grant subject to conditions of outline planning permission for the demolition of 16 St Margaret's Drive and the erection of up to 48 dwellings, associated infrastructure, landscape and biodiversity enhancements, all matters reserved except for access from St Margaret's Drive.
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Decision

1. The application for an award of costs is refused.

The submissions for Rainier Developments Limited and the Gilder Family

2. The costs application was submitted in writing. The applicant asserts that following the receipt of Decision ref: APP/G1630/W/21/3284820 ("the Twynning Decision") the Tewkesbury Borough Council ("TBC") persisted with exactly the same losing arguments regarding how the 5-year housing land supply should be calculated and did so through witnesses common to both Inquiries.
3. The applicant advises that their invitation to TBC to reconsider its position in view of the Twynning Decision was declined. The applicant believes that TBC has failed to give good reason for a different position to be reached on the same matter in respect to this current appeal. They believe that the reliance on Decision ref: APP/V3120/W/22/3310788 ("The Grove Decision") is unreasonably wrong as a good reason to deviate from the particular conclusion of Twynning in respect to the same matter. The applicant asserts that the Grove Decision is authority for an alternative way of accommodating an adjacent authority's needs in a district without overstating that latter council's supply against its own Local Housing Needs ("LHN") and, when properly understood, supports the applicants' argument not that of TBC.
4. Accordingly, a partial award of costs is made in respect to the additional time that has been spent in addressing this issue at the Inquiry which the applicant believes is a cost which has been unnecessarily incurred.

The response by Tewkesbury Borough Council

5. The response to the costs application was made in writing. TBC firmly resists the application made against it. TBC maintains that it has not acted unreasonably in maintaining its position on the calculation of the housing land supply notwithstanding the Twynning decision.
6. TBC believes that it has not taken a blinkered approach. Rather it has sought Counsel advice upon the reasonableness of continuing its approach to housing land supply and disclosed this to the Inquiry, demonstrating a considered approach. Given previous case law¹ TBC states that it could not seek to challenge the Twynning decision, although that Judgement makes it clear that a similar point can be put again provided there is good reason.
7. TBC highlights that the point of contention is a novel issue rather than a point which has been argued many times before. It highlights that there is no express guidance contained in the National Planning Policy Framework ("the Framework") or the Planning Practice Guidance ("PPG"). Nor is there any guidance that can be drawn from caselaw or well-established lines of previous appeal decisions to aid in this particular matter. It believes that the Twynning decision is the first in respect to the supply issue.
8. TBC advises that the treatment of the disputed supply side of the LHN is of great importance to it, but that it also has implications nationally for local planning authorities and the development industry. Given the decision for this appeal will be based on the planning judgement of the decision maker, it believes that it is important that the approach was fully explored through the appeal before me. It maintains that the Grove Decision is of direct relevance to the issues in dispute.

Reasons

9. Parties in planning appeals normally meet their own expenses. However, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. Past Decisions are not binding on future Inspectors but are material considerations. Consistency of decision making is also a material consideration, although it does not mean that like cases must be decided in a like manner. However, a subsequent decision maker facing similar issues must provide reasons for departing from the previous decision maker².
11. Where, in the case of Twynning, TBC has lost an argument in an appeal, but the overall decision was to dismiss, then it cannot seek to challenge that decision pursuant to section 288 of the Town and Country Planning Act, unless there are exceptional reasons for doing so³. At the time of writing my Decision I had not been alerted to any such challenge. However, I accept that TBC is entitled to raise similar arguments in similar cases even where they have been rejected by an earlier Inspector provided, they can show good reason for doing so.

¹ Tewkesbury BC v SOS [2019] EWHC 1775

² Fox Strategic Land & Properties Ltd v SOS [2012] EWCA Civ 1198

³ Tewkesbury BC v SOC [2019] EWHC 1775

12. Apart from Twynning, my attention was not drawn to any other past Decisions which directly address this specific matter, indicating that the disputed supply related issue put before me is indeed novel.
13. Crucially, there is nothing before me that indicates that prior to the opening of this Inquiry, TBC did not genuinely believe that the Grove Decision, which was not put before the Twynning Inquiry, had some bearing on the particular matter that has arisen subsequent to the 5-year anniversary of the Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy 2011-2031 (2017). The fact that the evidence, associated cross-examination and Inspector questioning led me to disagree with TBC's argument does not mean there was no good reason to pursue it on the basis of the Grove Decision in the first instance.
14. Overall, this leads me to find that, despite accepting the appellant's approach, TBC had good reason in the first instance to pursue its defence on this novel issue in the manner it did. The fact that I found otherwise does not have a bearing on that.

Conclusion

15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Dillon

INSPECTOR